

DOES THE JUDICIARY PROVIDE ADEQUATE CONTROL  
OVER SUBSIDIARY LEGISLATION

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## PREFACE

In view of the alarmingly rate of subsidiary legislation enacted per year, there is a greater need for control over the subsidiary legislation so that the executive will not readily abuse the powers vested on to them according to their unfettered and unlimited discretion. This is more so if the legislation tend to encroach upon matters such as the rights, liberty and property of an individual.

The author has tried to explore the many possible ways in which the courts, by means of their creativity and flexibility in interpreting the statutes in question and by their initiative to devise loopholes to combat any abuse on the parts of the executive.

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## CHAPTER I

In constitutional theory, the law-making function essentially belongs to the Parliament. However, with the growth of the function of the State and the consequent growth in the number of laws enacted per year by the legislature, Parliament has to entrust some of its legislative power to the subordinate law-making bodies.

The legal sovereignty of the Parliament still holds good for none of these lesser bodies can legislate except by and with the authority of the Parliament. Subsidiary legislation is the feature of modern civilisation of a State.

According to Dicey<sup>1</sup>, it is a result of 'collectivism'. Before this era of 'collectivism' the flow of these powers was no more than a mere trickle. After the two World Wars and with the introduction of the Welfare State, the exercise of subsidiary legislation was intensified and increased that it began to cast some uneasiness as to its extent. Most of the criticism have been aimed

'rather against the volume and character of delegated legislation than against the practise of delegation itself'<sup>2</sup>

Therefore, the question arises, whether subsidiary legislation is necessary and to what safeguards are available to ensure proper exercise of the power by